



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-832

Pure Magnesium from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results

SUMMARY: On April 25, 2012, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") final results of redetermination pursuant to voluntary remand of the 2006-2007 antidumping duty administrative review of pure magnesium from the People's Republic of China ("*Voluntary Remand Redetermination*").¹ Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (CAFC 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results and is amending the final results of the administrative review of pure magnesium from the People's Republic of China ("PRC") with respect to the margin assigned to Tianjin Magnesium International Co., Ltd. ("TMI") covering the period of review ("POR") May 1, 2006, through April 30, 2007.²

EFFECTIVE DATE: May 5, 2012.

¹ See Final Results Of Redetermination Pursuant To Voluntary Remand issued by the Department of Commerce, Court No. 09-00012, dated October 28, 2011, available at: <http://www.ia.ita.doc.gov/remands/index.html>.

² See *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008) and accompanying Issues and Decision Memorandum ("*Final Results*").

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4243.

SUPPLEMENTARY INFORMATION: In the *Final Results*, the Department granted TMI's request for two by-product offsets, and calculated a dumping margin for TMI of 0.63 percent. TMI and US Magnesium LLC ("Petitioner") initially challenged the final results with respect to several issues, and the court remanded two issues to the Department.³ During litigation proceedings for the 2006-2007 review, verification of TMI and its suppliers took place in the PRC for the 2007-2008 review. At verification, TMI's producer revealed that there were no by-product sales prior to April 2007, i.e. during the previous POR. During the first remand proceedings, Petitioner placed the 2007-2008 review verification report on the record of this litigation. The Department initially determined not to consider the evidence because it was from a subsequent review and did not exist when the Department made its determination in the 2006-2007 final results.

Shortly thereafter, the CAFC issued its decision in *Home Prods. Int'l, Inc. v. United States*,⁴ holding that a court abuses its discretion when it declines to remand to an agency when evidence sufficient to make a *prima facie* case that the agency proceedings under review were tainted by material fraud is presented. Based on the standard set forth in *Home Products*, the Department

³ In the first remand order, the Department was instructed to: (1) further explain the valuation of TMI's by-product offsets; and (2) further explain the Department's determination to use the surrogate financial ratios for overhead, selling, general and administrative expenses ("SG&A") and profit of Madras Aluminum Co. Ltd. in the normal value calculation. See *Tianjin Magnesium Int'l Co. v. United States*, 722 F. Supp. 2d 1322 (CIT 2010).

⁴ See *Home Prods. Int'l, Inc. v. United States*, 633 F.3d 1369 (CAFC 2011) ("*Home Products*").

requested a voluntary remand to determine whether to reopen the administrative record and consider the 2007-2008 verification report. On remand, the Department determined there was clear and convincing evidence sufficient to make a prima facie case that the 2006-2007 administrative review was tainted by fraud and reopened the record. The Department also determined, based on this evidence, that application of total adverse facts available to TMI was warranted because TMI had continued to seek by-product offsets even though record evidence clearly established that no by-product sales existed during the POR. The Department assigned to TMI a rate of 111.73, the calculated rate for the other mandatory respondent in the 2006-2007 review. The Department's final results of redetermination therefore changed TMI's margin from 0.63 percent to 111.73 percent. On April 25, 2012, the CIT sustained the Department's *Voluntary Remand Redetermination*.⁵

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's April 25, 2012 judgment sustaining the Department's voluntary remand results with respect to TMI constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. The cash deposit

⁵ *Tianjin Magnesium Int'l, Co. v. United States*, Ct. No. 09-00012, Slip Op. 12-54 (CIT April 25, 2012).

rate will remain the company-specific rate established for the subsequent and most recent period during which the respondent was reviewed.⁶

Amended Final Determination and Order

Because there is now a final court decision, we are amending the *Final Results* with respect to TMI's margin for the period May 1, 2006 through April 30, 2007. The revised weighted-average dumping margin is as follows:⁷

Exporter	Percent Margin
Tianjin Magnesium International Co., Ltd.	111.73

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by TMI during the POR using the revised assessment rate calculated by the Department in the *Voluntary Remand Redetermination*.

⁶ See *Pure Magnesium From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011).

⁷ The rate for the other mandatory respondent in the instant administrative review, Shangxi Datuhu Coke & Chemicals Co., Ltd. ("Datuhe"), remains unchanged. In its first remand order, the Court resolved a ministerial error allegation, holding that there was no ministerial error because the Department's acts were intentional. See *Tianjin Magnesium Int'l, Co. v. United States*, Ct. No. 09-00012, Slip Op. 10-87 (CIT August 9, 2010).

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

May 9, 2012_____
(date)

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